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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 163

NORTH SIDE LAUNDRY COMPANY,
Appellant,

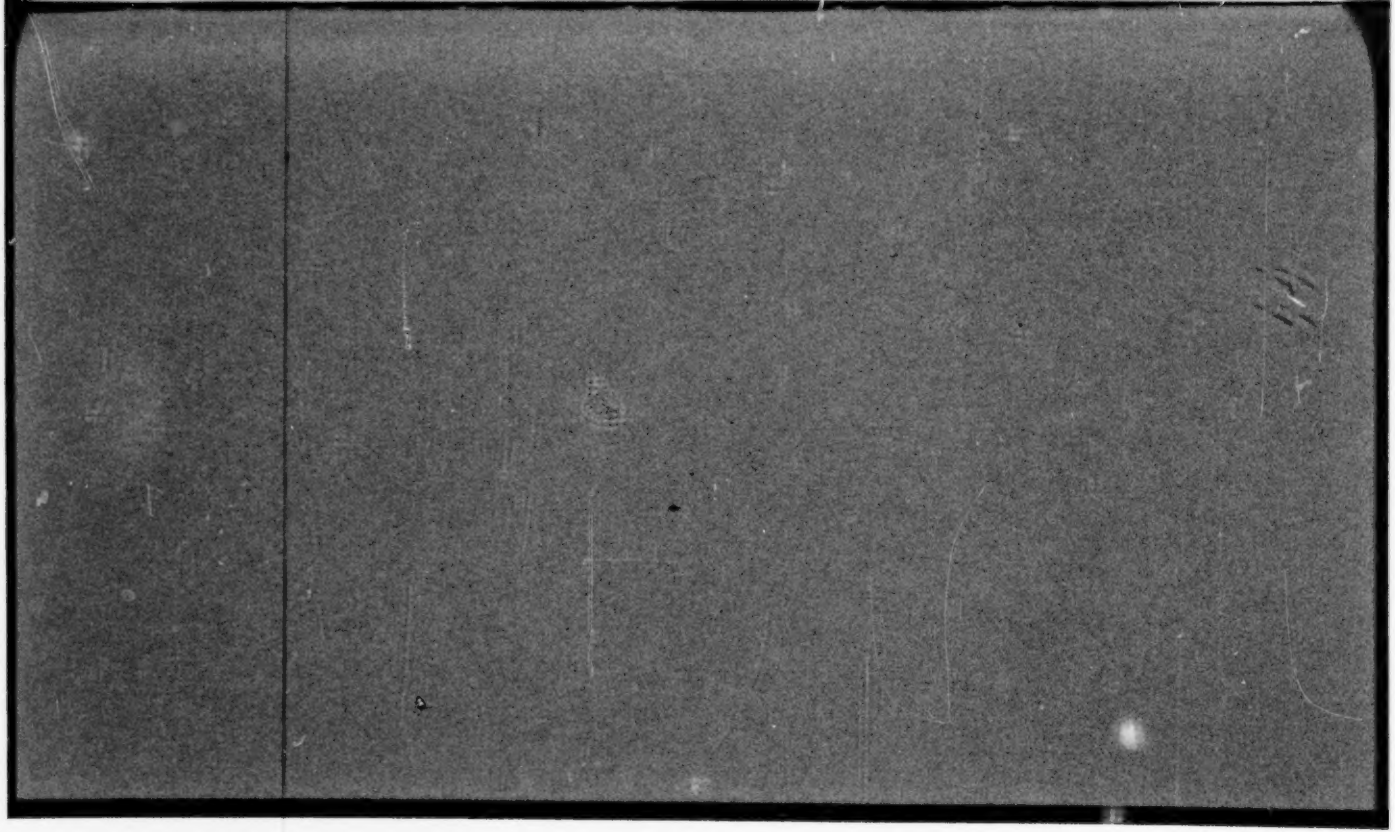
vs.

BOARD OF PROPERTY ASSESSMENT, APPEALS AND REVIEW, ALLEGHENY COUNTY

APPEAL FROM THE SUPREME COURT OF THE STATE OF PENNSYLVANIA

STATEMENT AS TO JURISDICTION

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Counsel for Appellant.



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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 163

NORTH SIDE LAUNDRY COMPANY, A CORPORATION,
Appellant,

vs.

BOARD OF PROPERTY ASSESSMENT, APPEALS AND REVIEW, ALLEGHENY COUNTY

STATEMENT AS TO JURISDICTION

The North Side Laundry Company, pursuant to Rule 12 of the Rules of the Supreme Court of the United States, files this statement which discloses the basis on which it contends that the Supreme Court of the United States has jurisdiction upon appeal to review the judgment entered by the Supreme Court of Pennsylvania in the above entitled case.

Opinion Below

The Supreme Court of Pennsylvania filed a written opinion which is reported at *366 Pa. 636* (a copy of said opinion is attached hereto as Appendix "A.") The opinion and order appealed from was filed on March 19, 1951, and this application for appeal to the Supreme Court of the United States was presented on June 4, 1951, within the time allowed for appeal. *Title 28 U.S.C. 2101.*

Statute Conferring Jurisdiction

The jurisdiction of the Supreme Court of the United States is invoked under Section 237 (a) of the Judicial Code, as amended, *28 U.S.C. 1257* (Par. 2) which provides that final judgments of state courts may be reviewed by the Supreme Court "by appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution . . . and the decision is in favor of its validity."

State Statute Involved

This case draws in question the validity of the County Assessment Law of the Commonwealth of Pennsylvania, Act of 1933, P. L. 853, as amended by the Act of 1941, P. L. 219, 72 P.S. 5020-201, which provides:

> "The following subjects and property shall as hereinafter provided, be valued and assessed, and subject to taxation for all county, city, borough, town, township, school and poor purposes at the annual rate:
>
> "(a) All real estate to wit: Houses, lands, lots of ground and ground rents, mills and manufactories of all kinds, furnaces, forges, bloomeries, distilleries, sugar houses, malt houses, breweries, tan yards, fisheries and ferries, wharves, and all other real estate not exempt by law from taxation."

The Appellant contended throughout the course of this litigation in the state courts that this Act, as construed, violated the Federal Constitution, but the decision of the Supreme Court of Pennsylvania upholds its validity.

Constitutional Provision Involved

The Appellant invokes the protection of that portion of Article XIV, Section 1, of the Constitution of the United States which provides:

> "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Statement of the Case

This is an appeal by the North Side Laundry Company from the Allegheny County tax assessment for the triennial years 1948, 1949 and 1950.

The Board of Property Assessment, Appeals and Review of Allegheny County, Pennsylvania, in assessing the real estate of the North Side Laundry Company for the triennial assessment for 1945, 1946 and 1947 included as a subject of taxation "machinery and equipment." The machinery and equipment assessed was personalty, unattached to the freehold, consisting of ironers, tumblers, driers, washers, extractors, pressers and other equipment required in laundering clothing. The assessment was made under the provision of the Pennsylvania Act of 1933, P. L. 853, as amended by the Act of 1941, P. L. 219, 72 P.S. 5020-201, which provides:

> "The following subjects and property shall, as hereinafter provided, be valued and assessed and subject to taxation . . .
>
> "(a) All real estate to wit: Houses, lands, lots of ground and ground rents, mills and manufactories of all kinds, furnaces, forges, bloomeries, distilleries, sugar houses, malt houses, breweries, tan yards, fish-

eries and ferries, wharves, and *all other real estate* not exempt by law from taxation . . ." (Emphasis supplied.)

The North Side Laundry Company appealed from this assessment and the Court of Common Pleas of Allegheny County sustained the appeal and set aside the assessment on "machinery and equipment." The Pennsylvania Superior Court affirmed the judgment of the Common Pleas Court and stated: "Only such property as the statute described can be made the subject of assessment. There is no such thing as taxation by implication:" *161 Pa. Superior Ct. 412, 54 A. 2d 912* (1947). On April 22, 1948, the Supreme Court of Pennsylvania in a five to two decision reversed the Order of the Superior Court and reinstated the assessment upon "machinery and equipment." *United Laundries, Inc., et al.* v. *Board of Property Assessment, Appeals & Review,* 359 Pa. 195, 58 A. 2d 833 (1948). The Court found that the petitioners' laundry was not a mill or manufactory and obviously did not fall under the other statutory classifications. However, the Court applied the so-called "assembled industrial plant doctrine" to the laundry's personal property and held that it was taxable as "*all other real estate.*" Two Justices dissented on the ground that the Act did not say this.

At this point, the North Side Laundry Company for the first time attempted to raise the Federal question. It petitioned the court for a reargument, alleging that the statute, as construed, denied to it the equal protection of law as provided by the 14th Amendment of the United States Constitution. The court denied this petition and refused to allow an appeal to the Supreme Court of the United States.

During the course of the above litigation the Board assessed the North Side Laundry Company for the triennial 1948, 1949 and 1950 and again included "machinery and

equipment" as real estate. Of the $55,015 assessment made, $25,950 was for machinery.

On July 28, 1948, the North Side Laundry Company appealed from this assessment to the Court of Common Pleas of Allegheny County alleging:

That the Act of 1933, under which the assessment was made, violated the 14th Amendment to the Federal Constitution (R. 5a-6a);

That the Board's plan of assessment under the Act of 1933, as construed by the court, whereby the chattels of the North Side Laundry Company were assessed as real estate and similar chattels of other property owners were not assessed, constituted an intentional systematic undervaluation of taxable property of the same class (R. 5a).

At the hearing the petitioner offered to prove:

That the "machinery and equipment" of the North Side Laundry Company, which was assessed as real estate, consisted of ironers, tumblers, driers, washers, extractors, pressers and other equipment required in laundering clothing, none of which personalty was attached to the freehold so as to become a fixture (R. 28a);

That there were many service industries in Allegheny County, all of which require considerable machinery and equipment in order to operate as an industry, such as theaters, cab companies, service stations, automobile repair companies, restaurants, clothing stores, jewelry stores, department stores, office buildings, frozen food locker companies, hotels, beauty shops, banks, and self-service laundries (R. 13a-27a); and

That the Board had not assessed the machinery and equipment in those industries although their machinery is just essential to their operation as the washers, driers, etc., are to the North Side Laundry Company *which are assessed* (R. 13a-27a).

The court refused to let the plaintiff prove these allegations on the grounds that this evidence was incompetent, irrelevant and immaterial in the light of the *United Laundries* case, *supra,* and dismissed the appeal (R. 27a-28a).

On November 20, 1951, the Superior Court of Pennsylvania affirmed the judgment of the Allegheny County Court and dismissed the appeal, but because of the importance of the questions involved, certified the case to the Supreme Court of Pennsylvania (R. 44a).

On March 19, 1951, the Supreme Court of Pennsylvania sustained the lower courts' decisions and dismissed the appeal. (A copy of the opinion is attached as Appendix "A").

On March 29, 1951, the Appellant filed a petition for reargument which was refused by the Court on April 9, 1951, and this appeal was presented on June 4, 1951.

Questions Presented

1. Does the Pennsylvania County Assessment Law violate the equal protection clause of the 14th Amendment to the Federal Constitution, when, as construed by the courts, it permits the assessment of a laundry's machinery and equipment as real estate and does not require the assessment of similar machinery and equipment in other service industries?

2. Was it error for the Pennsylvania courts to exclude evidence offered by the Appellant on the grounds that it was incompetent, irrelevant and immaterial when such evidence showed that the personal property of the Appellant was assessed as real estate while personal property of other service industries was not so assessed?

3. Has the Appellant been denied equal protection of the law contrary to the 14th Amendment when its machinery and equipment has been assessed for taxation as real estate

and similar machinery and equipment of other service industries has not been so assessed?

How Federal Questions Were Raised

At the outset of these proceedings the North Side Laundry Company raised the federal question of discrimination in the real estate assessment for 1948, 1949 and 1950. On July 29, 1948, North Side Laundry Company filed its appeal from the assessment in the Common Pleas Court of Allegheny County. The federal question of discrimination was raised in Paragraph Sixth of Appellant's Petition which reads:

> "SIXTH: The Board's plan of assessment, by virtue of which Petitioner's chattels are assessed as real estate, is an intentional, systematic undervaluation by the Board of taxable property of the same class belonging to other owners, in that chattels similar in nature to those of your Petitioner, owned, held, and/or used by other similarly circumstanced taxpayers located in Allegheny County are not assessed as real estate." (R. 5a).

And the question of the constitutionality of the Act of 1933 was raised in Paragraph Seventh which reads:

> "SEVENTH: The assessment in question is illegal, void and contrary to law in that:
>
> "(a) It assesses said chattels of Petitioner as real estate.
>
> "(b) It is in violation of the Constitution of Pennsylvania and the Constitution of the United States of America.
>
> "(c) The Act of May 22, 1933, P. L. 853 (72 P.S. Section 5020-1 et seq.) and particularly Section 201 thereof, as last amended (72 P.S. Supp. Section 5020-201), construed by the Supreme Court of Pennsylvania in the Brighton Laundry appeal (359 Pa. 195), under

which said assessment was made, is in violation of the Pennsylvania Constitution and the Constitution of the United States." (R. 5a-6a).

At the hearing in the trial court Appellant offered evidence to prove that the assessment of the Appellant's machinery and equipment was discriminatory and unconstitutional (R. 13a-28a). The trial court excluded this evidence as incompetent, irrelevant and immaterial (R. 27a-28a). The opinion filed by the hearing judge clearly indicates that the Appellant attacked the constitutionality of the Act of 1933 and that the court sustained is validity. (R. 30a-31a.)

Appellant filed exceptions to the trial judge's decision raising the federal questions in the "First" (R. 32a) and the "Fifth" (R. 35a) exceptions.

The Court of Common Pleas of Allegheny County affirmed the trial judge's decision and dismissed Appellant's exceptions (R. 37a-43a).

The same federal questions were raised by the Appellant in its appeal to the Superior Court of Pennsylvania. The Superior Court affirmed the decision of the Common Pleas Court, but because of the importance of the questions involved, certified the case to the Supreme Court of Pennsylvania (R. 44a-45a).

In the Supreme Court the Appellant asserted that the Assessment Law violated the 14th Amendment to the Federal Constitution because the Act, as construed by the courts, permitted the assessment of the personal property of a laundry as real estate for the purposes of taxation and did not require the personal property of other similar industries to be likewise assessed. Appellant contended that this resulted in an intentional, systematic undervaluation of other property of the same class as Appellant's which is clearly discrimination prohibited by the Consti-

tution of the United States (Pages 9-28 of Appellant's Brief). The Supreme Court, in affirming the lower court's dismissal of the appeal, determined the federal questions presented. It held that the personal property of a laundry was taxable as real estate because a laundry was an industrial plant and the personal property of the other service industries listed in Appellant's offer was not taxable because the other service industries were not industrial plants. On Page 4 of its opinion the court stated: "The assessment by the Board is in accordance with the Constitution of the United States, . . . Plaintiff's appeal was, therefore, properly dismissed."

Federal Questions Are Substantial

Section 1257 of Title 28 of U.S.C. provides:

> "Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> * * * * * * *
>
> "(2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity."

Appellant respectfully submits that the case at bar falls squarely within Paragraph (2) of the above Act and, by the law repeatedly pronounced by the Supreme Court of the United States, this case is properly reviewable by appeal to said Court.

Throughout this entire litigation and through the highest court of the Commonwealth of Pennsylvania the Appellant has asserted, in accordance with the Pennsylvania procedure, that the Pennsylvania County Assessment Law of

1933 violates the equal protection clause of the 14th Amendment to the Federal Constitution because:

1. The *washing machines* in the Appellant's laundry are assessed as real estate while the *washing machines* in self-service laundries are not assessed;

2. The *sewing machines* in the Appellant's laundry, which are used to replace buttons on laundered clothes, are assessed as real estate while the sewing machines in clothing stores, necessary for the alteration of clothes are not assessed.

3. The *pressers* in Appellant's laundry as assessed as real estate while identical pressers in hotels are not assessed;

4. The dish washing machines, ice boxes, deep freezes and other equipment necessary for the operation of restaurants are not assessed as real estate while the machinery necessary for the operation of a laundry is assessed;

5. The motion picture machines, projectors, sound machines and other equipment necessary for the operation of theaters are not assessed as real estate while the machinery necessary for the operation of a laundry is assessed; and

6. Lathes, pressers, jacks, compressors and other equipment necessary for the operation of automobile repair industries are not assessed as real estate while the machinery necessary for the operation of a laundry is assessed.

(There are numerous other service industries whose machinery and equipment is not assessed as real estate cited in Appellant's offer (R. 15a-27a).

Such discrimination in the tax legislation of state governments has been repeatedly struck down by the Supreme Court of the United States. "The purpose of the equal protection clause of the 14th Amendment is to secure to every person within the state's jurisdiction against intentional and arbitrary discrimination, . . ." *Sunday Lake*

Iron Co. v. *Wakefield Twp.*, 247 U. S. 350 (1917); *Sioux City Bridge Co.* v. *Dakota County, Neb.*, 260 U. S. 441 (1923); *Cumberland Coal Co.* v. *Board of Tax Revision*, 284 U. S. 23 (1931); *Iowa-Des Moines Natl. Bank* v. *Bennett*, 284 U. S. 239 (1931); *Hillsborough Twp.* v. *Cromwell*, 326 U. S. 620 (1945); *Ohio Oil Co.* v. *Conway*, 281 U. S. 146 (1929); *Concordia Fire Ins. Co.* v. *Ill.*, 292 U. S. 535 (1934); and *Wheeling Steel Corp.* v. *Glander*, 337 U. S. 580 (1949).

The Appellant contends that the Commonwealth of Pennsylvania has violated those federal rights which are protected by the above cases.

Throughout the litigation in the various state courts the North Side Laundry Company asserted that the Act of 1933, as construed by the Pennsylvania courts not only violated the Federal Constitution but violated the Constitution of Pennsylvania as well. The Supreme Court of Pennsylvania held that the assessment did not violate the State Constitution and was "in accordance with the Constitution of the United States." From the record which was before that court it is clear that the federal questions were properly presented to that court and the court's decision is squarely based upon the federal ground. From the very nature of the proceedings before that court and its written decision which determined the questions presented by their merits, that is *no adequate non-federal ground* which will support the court's decision.

The court held that the assessment was in accordance with the Federal Constitution on the grounds that the machinery and equipment in the various service industries included in the Appellant's offer was not the same as the machinery and equipment in Appellant's laundry.

The court held that a laundry was not a mill or manufactory nor was it included in the other classifications in the Act of 1933; but the court applied the so-called "assembled industrial plant doctrine" of Pennsylvania to the laundry

and held that its machinery and equipment was part of the real estate by virtue of that doctrine. It further held that the words of the Act, "All other real estate" meant all industrial plants and their machinery and equipment. In denying the discrimination claim, the court held that the laundry was an industrial plant and the other service industries were not. This places the case within the decision of the Supreme Court of the United States in *Dahnke-Walker Milling Co.* v. *Bondurant*, 257 U. S. 282 (1921).

In that case the plaintiff contended that the state statute in question violated the 14th Amendment when applied to interstate transactions. The state court held that the transaction in question was not in interstate commerce and consequently, sustained the validity of the state act. The case went to the Supreme Court of the United States on a writ of error. Objection was made to the jurisdiction of the court; it was insisted that the court could only review the case on a writ of certiorari. The court at pages 288 and 289 stated:

> "In the state court the plaintiff did not simply claim a right or immunity under the Constitution of the United States, but distinctly insisted that, as to the transaction in question the Kentucky statute was void, and therefore unenforceable, because in conflict with the commerce clause of the Constitution. The court did not accede to the insistence, but applied and enforced the statute. Of course, that was an affirmation of its validity when so applied. (Cases cited). *The case is therefore of the class described in the first of the provisions which we have quoted from the jurisdictional section. That the statute was not claimed to be invalid in toto and for every purpose does not matter. A statute may be invalid as applied to one state of facts and yet valid as applied to another.* (Cases cited). *Besides a litigant can be heard to question a statute's validity only when and so far as it is being or is about to be applied to his disadvantage.*

(Cases cited). *Neither does it ma on what ground the court upheld and enforced the statute. The provisions quoted from the jurisdictional section show that in cases where the validity of a state statute is drawn in question because of alleged repugnance to the Constitution the mode of review depends on the way in which the state court resolves the question. If it be resolved in favor of the validity of the statute the review may be on a writ of error; and if it be resolved against the validity the review can only be on writ of certiorari. The provisions take no account of the particular grounds or reasons on which the decision is put.*" (Emphasis supplied).

This law governing review of state court decisions by the Supreme Court of the United States on writ of error applies today to review by appeal. *Charleston Fed. Sav. & L. Assn.*, v. *Alderson*, 324 U. S. 182 (1944). Although the Pennsylvania Supreme Court stated that the plan of assessment was in accordance with the Federal Constitution, it did not specifically sustain the challenged Act in its written opinion. However, the Appellant challenged the constitutionality of the Assessment Law in the court of first instance (R. 5a-6a) and maintained such position through all of the Pennsylvania courts (Pages 9-28 of Appellant's Brief), and therefore, by sustaining the assessment, the Pennsylvania court necessarily sustained the validity of the Assessment Law of 1933.

Because of the greatly increased cost of operation, local governments in recent years have explored numerous and unique taxing methods for the purpose of raising additional revenue. In their zeal for expediency, traditional safeguards and rights are too often overlooked. It is now, under critical conditions, that the citizen must look to the Federal Government for protection. The questions presented by this appeal are substantial. By reason of the

discriminatory assessment, laundries are required to bear a disproportionate share of the cost of local government.

Conclusion

The North Side Laundry Company respectfully submits that it has been denied equal protection of the law by the Commonwealth of Pennsylvania and that under the law of the United States, the Supreme Court of the United States has jurisdiction to review on appeal the judgment of the Supreme Court of Pennsylvania.

MAHLON E. LEWIS,
Attorney for North Side Laundry Company.

APPENDIX "A"

IN THE SUPREME COURT OF PENNSYLVANIA, WESTERN DISTRICT, MARCH TERM, 1951

No. 59

NORTH SIDE LAUNDRY COMPANY, a corporation, *Appellant*,

v.

BOARD OF PROPERTY ASSESSMENT, APPEALS AND REVIEW, ALLEGHENY COUNTY

Appeal from Order of the Superior Court at No. 168 April Term, 1950, Affirming the Order of the Court of Common Pleas of Allegheny County at No. 957 October Term, 1948.

OPINION OF THE COURT

Filed: March 19, 1951

DREW, *C. J.*

North Side Laundry Company, plaintiff, here questions the constitutionality of the action of the Board of Property Assessment, Appeals and Review of Allegheny County, in including in the triennial assessment of plaintiff's realty for the years 1948, 1949 and 1950 certain equipment used in the plant. The learned court below and the Superior Court upheld the action of the Board on the authority of our decision in *United Laund. v. Board of Prop. Assess.*, 359 Pa. 195, 58 A. 2d 833. Because of the importance of the questions involved, the Superior Court certified the case to this Court under the Act of June 24, 1895, P. L. 212, 810, for our consideration and decision.

In the *United Laundries* case, supra, this plaintiff and four other laundries contended that, under the Act of May

22, 1933, P. L. 853, 8201 as amended,[1] their equipment, consisting of washers, dryers, tumblers, pressers, ironers, etc., was improperly included as a part of the real estate in the triennial assessment made by the Board for the years 1945, 1946, and 1947. We there held that a commercial laundry was an industrial plant within the meaning of the "assembled industrial plant doctrine" and the equipment was, therefore, a part of the real estate subject to assessment under the Act of 1933. In assessing plaintiff's real estate for the years 1948, 1949 and 1950 the Board, following our decision in that case, again included the laundry equipment in the assessment and plaintiff again appealed, this time basing its argument on the rule laid down in *Sunday Lake Iron Co. v. Wakefield*, 247 U.S. 350, 352, that "intentional systematic undervaluation by state officials of other taxable property in the same class contravenes the constitutional right of one taxed upon the full value of his property." See also *Iowa-Des Moines Bank v. Bennett*, 284 U.S. 239; *Sioux City Bridge Co. v. Dakota County, Neb.*, 260 U.S. 441. The soundness of that rule is patent but plaintiff has failed completely to bring itself within the scope of it.

At the hearing plaintiff offered to prove that the equipment of other "industries", such as theaters, cab companies, service stations, automobile repair companies, restaurants, stores, office buildings, hotels, beauty ships, banks, and self-service laundries, were not included in their assessment and that they, as well as plaintiff, are service industries. From that plaintiff concludes that there is a systematic undervaluation of other taxable property in violation of the constitutional guarantees contained in the 14th amendment of the Constitution of the United States and Article IX, § 1 of the Pennsylvania Constitution.

That argument is predicated in part on a misconception

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[1] "The following subjects and property shall, as hereinafter provided, be valued and assessed, and subject to taxation . . .: (a) All real estate, to wit: Houses, lands, lots of ground and ground rents, mills and manufactories of all kinds, furnaces, forges, bloomeries, distilleries, sugar houses, malt houses, breweries, tan yards, fisheries, and ferries, wharves, and all other real estate not exempt by laws from taxation . . ."

of our holding in the United Laundries case. We did not there hold that the personal property of a laundry is subject to assessment under the Act of 1933. What we did hold was that a commercial laundry is an industrial plant and hence that the equipment necessary to its operation is real estate within the meaning of the Act of 1933. Therefore, the fact that the businesses to which plaintiff referred are sometimes generically called "industries" is irrelevant to the issue here raised. The question is whether their establishments are industrial plants.

The answer to that question is self-evident. By no stretch of the imagination could a bank building, a hotel, a theater or any of the other business establishments referred to by plaintiff be considered an industrial plant. It is true that we sometimes speak of "the movie industry", "the hotel industry" or "the banking industry", but that is merely a loose use of language to convey that idea that the particular business is a sizeable one. In spite of that colloquialism, we do not speak of the buildings housing such businesses as "industrial plants." Plaintiff attempts to give to that phrase a legal meaning that goes far beyond anything that was contemplated by the Courts when they pronounced this rule and by the legislature when it adopted it in the Act of 1933. The law can do no better than to define an industrial plant as that type of establishment which the ordinary man thinks of as such. Certainly a commercial laundry comes within that definition but the other businesses here mentioned do not.

Plaintiff's last contention is that the assessment by the Board violates Article III, § 20 of the Pennsylvania Constitution, which prohibits the delegation of the power to levy taxes to "any special commission". It is the position of plaintiff that by applying the "assembled industrial plant doctrine", the Board is given the power to determine what personal property shall be taxed as real estate. This argument is equally without merit. The Board merely assesses all real estate included in the Act of 1933 and, as we have previously stated, the equipment in plaintiff's laundry is real estate within the meaning of that Act. Furthermore, we stated in *Suermann v. Hadley*, 327 Pa.

190, 201, 192 A. 645: " . . . in execution of the tax law and to permit the levy of the tax, a base on which it is to be applied is found by the assessing authorities in accordance with a standard fixed by the legislature. The finding of that base is purely an executive function delegated to a municipal agency."

The assessment by the Board is in accordance with the Constitution of the United States, the Pennsylvania Constitution and the Act of 1933. Plaintiff's appeal was, therefore, properly dismissed.

Order affirmed.

(5912)

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 163

NORTH SIDE LAUNDRY COMPANY,
Appellant,

vs.

BOARD OF PROPERTY ASSESSMENT, APPEALS AND REVIEW, ALLEGHENY COUNTY

APPEAL FROM THE SUPREME COURT OF THE STATE OF PENNSYLVANIA

STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS OR AFFIRM

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